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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/877,159	06/08/2001	David M. Baggett	09765-011002	1014

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EXAMINER

COSIMANO, EDWARD R

ART UNIT PAPER NUMBER

3629

DATE MAILED: 06/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/877,159

Applicant(s)

BAGGETT, DAVID M.

Examiner

Edward R. Cosimano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 and 52-55 is/are pending in the application.
- 4a) Of the above claim(s) none is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-46 and 52-55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 June 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 08 June 2001 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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1. Applicant should note the changes to patent practice and procedure:
 - A) effective December 01, 1997 as published in the Federal Register, Vol 62, No. 197, Friday October 10, 1997; and
 - B) effective November 07, 2000 as published in the Federal Register, Vol 65, No. 54603, September 08, 2000.
2. The disclosure is objected to because of the following informalities:
 - A) applicant must update:
 - (1) the continuing data on page 1,
with the current status of each of the referenced applications, e.g., --now abandoned--, or --now patent #?--, or --which is abandoned and now serial number #?--, etc.

Appropriate correction is required.

3. The specification and drawings have not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification or drawings. Applicant should note the requirements of 37 CFR § 1.74, § 1.75, § 1.84(o,p(5)), § 1.121(a)-1.121(f) & § 1.121(h)-1.121(i).

4. Claims 18 & 39 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4.1 In regard to claim 18, this claim lacks antecedent basis in base claim 14, for the "second set of constructed fares....".

4.2 In regard to claim 39, this claim lacks antecedent basis in base claim 35, for the "second set of constructed fares....".

4.3 For the above reason(s), applicant has failed to particularly point out what is regarded as the invention.

5. 35 U.S.C. § 101 reads as follows:

"Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter or any new and useful improvement thereof, may obtain a patent therefore, subject to the conditions and requirements of this title".

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5.1 Claims 1-42 & 52-55 are rejected under 35 U.S.C. § 101 because the invention as claimed is directed to non-statutory subject matter.

5.1.1 Although the instant claims recite:

A) a method, (claims 1-42 & 52-55), which has a practical application in the technological arts, and

B) which does not define either a computer program, a data structure, non-functional descriptive material, (i.e. mere data) or a natural phenomenon, the instant claims merely define a series of steps to be performed on a computer.

5.1.2 In regard to claims 1-42 & 52-55, the invention as set forth in these claims merely describes constructing/determining a fare, however, as recited in these claims neither the constructed/determined fare is tangibly used in a concrete manner so as to produce a concrete and tangible result with in the technological arts. It is further noted that the process recited in these claims could in fact be accomplished with pen and paper and/or the mind of the user.

5.1.3 It is further noted that applicant has not claimed a specific process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, which is either altered or changed or modified by the invention recited in claims. Hence, these claims fail to produce a concrete and tangible result with in the technological arts.

5.1.4 It is further noted that applicant has not claimed either:

A) pre computer processing, since the claims fail to recited that the data, which originates from an unknown source, is manipulated or changed before it is processed, or

B) post computer processing, since the claims fail to recited that the data which represents the result of the claimed manipulation is either manipulated or used or changed by any device after it has been processed.

5.1.5 In view of the above, the invention of claims 1-42 & 52-55 merely manipulates the abstract idea of constructing/determining fares in regard to claims 1-42 & 52-55.

5.1.6 In view of the above, it is further noted that the invention of claims 1-42 & 52-55 lack a claimed practical application since the claimed invention, either:

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A) does not have the functionality required to carry out the recited steps or functions of the claimed invention; or

B) is not used by any system or device or method outside of the claimed invention,

in a concrete and tangible manner, (note In re Beauregard 35 USPQ2d 1383 (CAFC 1995) and the associated claims of U.S. Patent 5,710,578; and State Street Bank & Trust Co. v. Signature Financial Group Inc. 47 USPQ2d 1596 (CAFC 1998)).

5.1.7 It is further noted that the type/nature of either the data or the calculated numbers does not affect the operation of the claimed invention and hence are considered to be non function descriptive material, (note In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983)).

5.1.7 Hence, claims 1-42 & 52-55 are directed to non-statutory subject matter.

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6.1 Claim s 1-46 & 52-53 rejected under 35 U.S.C. § 102(b) as being clearly anticipated by the "Construction Processing logic" articles (AQ, AR & AS filed May 09, 2003) in view of applicant's remarks.

6.1.1 As admitted to by applicant the concepts of "arbitraries" and "gateways" as well as constructing fares by combining at least arbitraries and gateways are well established terms and procedures in the art, see page 17 of the response filed May 09, 2003, "The examiner has not given any patentable weight to the terms "gateway" and "arbitrary". These terms are well known in the art as discussed in Applicant's background and as evidenced by the enclosed draft paper from ATPCO entitled Data Application Constructed fares Version 1.0. As used by Applicant and by industry ... by the examiner."; see also page 16, "Applicant's claims are ... record. In general, for domestic travel airlines publish fares for markets. However, in

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situations where fares are not published, such as for markets involving minor cities, the airlines rely on a process called "fare construction" to price travel. The fares ... do not have such published fares.

6.1.2 In view of these admissions, a skilled artisan would inherently have to either mentally or with the aid of a computer or some other type of system:

A) "determine interior cities that appear with gateway cities in arbitraries for a particular airline";

B) "search for gateway cities corresponding to determined interior cities appearing in the arbitraries"; and

C) "applying the arbitraries corresponding to the determined interior cities to published fares involving the gateway cities to produce the set of constructed fares for the airline."

Hence the claim system is well known and has been used by others more than 1 year before the invention of by applicant.

7. Response to applicant's arguments.

7.1 All rejections and objections of the previous Office action not repeated or modified and repeated here in have been overcome by applicant's last response.

7.2 As per the 35 U.S.C. § 112 2nd paragraph rejection, since set of claims submitted May 09, 2003 do not contain the amendments to claims 18 & 39 as mentioned by applicant in the remarks, this rejection has been maintained and hence, applicant's arguments are non persuasive.

7.3 As per the 35 U.S.C. § 101 rejection, since these claims merely recite:

A) determining a set of cities for information/data;

B) searching a database for more data/information; and

C) manipulating the data/information to obtain a pure number;

which as recited in these claims is never used, nor are external operations/functions being performed to obtain the data/information, the invention as recited in claims 1-42 & 52-55 is directed to an abstract ideal, and hence applicant's arguments are non persuasive.

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8. The shorten statutory period of response is set to expire 3 (three) months from the mailing date of this Office action.


9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward Cosimano whose telephone number is (703) 305-9783. The examiner can normally be reached Monday through Thursday from 7:30am to 6:00pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss, can be reached on (703)-308-2702. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1113.

10.1 The fax phone number for UNOFFICIAL/DRAFT FAXES is (703) 746-7240.

10.2 The fax phone number for OFFICIAL FAXES is (703) 305-7687.

10.3 The fax phone number for AFTER FINAL FAXES is (703) 308-3691.

06/13/03


Edward R. Cosimano
Primary Examiner A.U. 3629